

TITLE 1

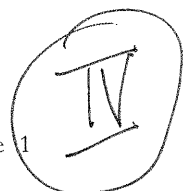
CHAPTER 13
PUBLIC RECORDS AND PROCEEDINGSSUBCHAPTER 1-A
EXCEPTIONS TO PUBLIC RECORDS

§432. Exceptions to public records; review

1. Recommendations. During the second regular session of each Legislature, the review committee may report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process. Before reporting out legislation, the review committee shall notify the appropriate committees of jurisdiction concerning public hearings and work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.

2. Process of evaluation. According to the schedule in section 433, the advisory committee shall evaluate each public records exception that is scheduled for review that biennium. This section does not prohibit the evaluation of a public record exception by either the advisory committee or the review committee at a time other than that listed in section 433. The following criteria apply in determining whether each exception scheduled for review should be repealed, modified or remain unchanged:

- A. Whether a record protected by the exception still needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the exception;
- C. Whether federal law requires a record to be confidential;
- D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
- E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
- F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;



G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;

H. Whether the exception is as narrowly tailored as possible; and

I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record protected by the exception.

2-A. Accountability review of agency or official. In evaluating each public records exception, the advisory committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

2-B. Recommendations to review committee. The advisory committee shall report its recommendations under this section to the review committee no later than the convening of the second regular session of each Legislature.

3. Assistance from committees of jurisdiction. The advisory committee may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The advisory committee may hold public hearings after notice to the appropriate committees of jurisdiction.

§434. Review of proposed exceptions to public records

1. Procedures before legislative committees. Whenever a legislative measure containing a new public records exception is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed exception may not be enacted into law unless review and evaluation pursuant to subsection 2 have been completed.

2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred.

The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

- A. Whether a record protected by the proposed exception needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;
- C. Whether federal law requires a record covered by the proposed exception to be confidential;
- D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
- E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
- F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;
- G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
- H. Whether the proposed exception is as narrowly tailored as possible; and
- I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.

2-A. Accountability review of agency or official. In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

3. Report. The review committee shall report its findings and recommendations on whether the proposed exception should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.



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[RCWs](#) > [Title 42](#) > [Chapter 42.56](#) > [Section 42.56.140](#)

[42.56.130](#) << [42.56.140](#) >> [42.56.210](#)

RCW 42.56.140

Public records exemptions accountability committee.

(1)(a) The public records exemptions accountability committee is created to review exemptions from public disclosure, with thirteen members as provided in this subsection.

(i) The governor shall appoint two members, one of whom represents the governor and one of whom represents local government.

(ii) The attorney general shall appoint two members, one of whom represents the attorney general and one of whom represents a statewide media association.

(iii) The state auditor shall appoint one member.

(iv) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(v) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(vi) The governor shall appoint four members of the public, with consideration given to diversity of viewpoint and geography.

(b) The governor shall select the chair of the committee from among its membership.

(c) Terms of the members shall be four years and shall be staggered, beginning August 1, 2007.

(2) The purpose of the public records exemptions accountability committee is to review public disclosure exemptions and provide recommendations pursuant to subsection (7)(d) of this section. The committee shall develop and publish criteria for review of public exemptions.

(3) All meetings of the committee shall be open to the public.

(4) The committee must consider input from interested parties.

(5) The office of the attorney general and the office of financial management shall provide staff support to the committee.

(6) Legislative members of the committee shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7)(a) Beginning August 1, 2007, the code reviser shall provide the committee by August 1st of each year with a list of all public disclosure exemptions in the Revised Code of Washington.

(b) The committee shall develop a schedule to accomplish a review of each public disclosure exemption. The committee shall publish the schedule and publish any revisions made to the schedule.

(c) The chair shall convene an initial meeting of the committee by September 1, 2007.

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The committee shall meet at least once a quarter and may hold additional meetings at the call of the chair or by a majority vote of the members of the committee.

(d) For each public disclosure exemption, the committee shall provide a recommendation as to whether the exemption should be continued without modification, modified, scheduled for sunset review at a future date, or terminated. By November 15th of each year, the committee shall transmit its recommendations to the governor, the attorney general, and the appropriate committees of the house of representatives and the senate.

[2007 c 198 § 2.]

Notes:

Finding -- 2007 c 198: "The legislature recognizes that public disclosure exemptions are enacted to meet objectives that are determined to be in the public interest. Given the changing nature of information technology and management, recordkeeping, and the increasing number of public disclosure exemptions, the legislature finds that periodic reviews of public disclosure exemptions are needed to determine if each exemption serves the public interest." [2007 c 198 § 1.]

Exemptions Are Narrow

"This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected."

RCW 42.56.030

"... the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought."

RCW 42.56.210

Top Ten Public Interest Exemptions

#1

Law Enforcement RCW 42.56.420, .240

- Terrorism-prevention records, assessments, plans, RCW 42.56.420
- Law-enforcement intelligence & investigations, RCW 42.56.240(1)
- Identities of crime victims and witnesses, RCW 42.56.240(2) & (5)

Public Interest Reason

- Public safety
- Effective law enforcement
- Personal privacy

Top Ten Public Interest Exemptions

#2

Personal Financial Information RCW 42.56.230

- Credit card and financial account numbers
- Tax records
- PUD Billing/usage NOT exempt – *except from police*

Public Interest Reason – Privacy

- Risk of grave harm to individuals
- No legitimate public interest in these details

Top Ten Public Interest Exemptions

#3

Employee privacy

- Information in personnel files, if information would violate the right to privacy, RCW 42.56.230(2)
 - "Highly offensive" & no "legitimate concern" to public, RCW 42.56.050
- Addresses, phone numbers, personal email address, RCW 42.56.250(3)
- Healthcare records Federal law (ADA)
- No exemption just because NOT related to conduct of government

Public Interest Reason

- Risk of grave harm to individuals
- Low employee morale harms public
- No legitimate public concern in these details

Top Ten Public Interest Exemptions

#4

Employment and Licensing

- Public employment applications RCW 42.56.250(2)
- Test questions RCW 42.56.250(1)

Public Interest Reason

- Encourage qualified applicants
- Maintain integrity of hiring and licensing process
- Applicant's privacy

Top Ten Public Interest Exemptions

#5

Public Employment Discrimination

- Identity of agency employee seeking "informal" advice, RCW 42.56.250(4)
- Employing agency's investigative records, RCW 42.56.250(5)

Public Interest Reason

- Reduce taxpayer expenses
 - Encourages informal process
 - Allows investigation without interference

Top Ten Public Interest Exemptions

#6

Real Estate Appraisal, RCW 42.56.260

- Appraisal for agency sale or purchase of realty
- Only during sale, not more than three years

Public Interest Reason

- Fair bargaining with taxpayer dollars

Top Ten Public Interest Exemptions

#7

Legal advice

- Attorney-client communications, RCW 5.60.060(2)
- Work product, RCW 42.56.290
- Mediation records, RCW 42.56.600

Public Interest Reasons

- Before dispute: guide actions & avoid disputes
- During dispute: equal footing with adversary
- During mediation: encourage settlement

Top Ten Public Interest Exemptions

#8

Deliberative process RCW 42.56.280

- Drafts, recommendations, memos
- Opinions and policy positions – *NOT the raw data*
- NOT exempt after final decision

Public Interest Reasons

- Fosters decision making process
- Secures negotiation strategy

Top Ten Public Interest Exemptions

#9

Agency "Trade Secrets" RCW 42.56.270

- Valuable formulae, designs, source code, data
- If disclosure would produce "private gain and public loss"
- Five year window

Public Interest Reason

- Protects public investment
- Allows agencies to fairly compete

Top Ten Public Interest Exemptions

#10

Private Commercial Information RCW 42.56.270

- Economic development loan applications
- Trade secrets
 - if private gain and public loss
 - or if Trade Secret Act applies

Public Interest Reason

- Encourage State industry
- Encourage contractor/vendor applicants

No liability if your release in good faith!

- RCW 42.56.060 "No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter."

Show Your Work!

- Combat public cynicism by showing public **benefits**
- Add **benefit explanation** to exemption log
- Most exemptions are discretionary – **weigh public interests**
- Don't assert an exemption if there is **no public benefit**

Kansas Legislature[Home](#) > [Statutes](#) > [Statute](#)[Previous](#)[Next](#)**45-229****Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION****Article 2.--RECORDS OPEN TO PUBLIC**

45-229. Legislative review of exceptions to disclosure; continuation of sections listed. (a) It is the intent of the legislature that exceptions to disclosure under the open records act shall be created or maintained only if:

- (1) The public record is of a sensitive or personal nature concerning individuals;
- (2) the public record is necessary for the effective and efficient administration of a governmental program; or
- (3) the public record affects confidential information.

The maintenance or creation of an exception to disclosure must be compelled as measured by these criteria. Further, the legislature finds that the public has a right to have access to public records unless the criteria in this section for restricting such access to a public record are met and the criteria are considered during legislative review in connection with the particular exception to disclosure to be significant enough to override the strong public policy of open government. To strengthen the policy of open government, the legislature shall consider the criteria in this section before enacting an exception to disclosure.

(b) Subject to the provisions of subsection (h), all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and any new exception to disclosure or substantial amendment of an existing exception shall expire on July 1 of the fifth year after enactment of the new exception or substantial amendment, unless the legislature acts to continue the exception. A law that enacts a new exception or substantially amends an existing exception shall state that the exception expires at the end of five years and that the exception shall be reviewed by the legislature before the scheduled date.

(c) For purposes of this section, an exception is substantially amended if the amendment expands the scope of the exception to include more records or information. An exception is not substantially amended if the amendment narrows the scope of the exception.

(d) This section is not intended to repeal an exception that has been amended following legislative review before the scheduled repeal of the exception if the exception is not substantially amended as a result of the review.

(e) In the year before the expiration of an exception, the revisor of statutes shall certify to the president of the senate and the speaker of the house of representatives, by July 15, the language and statutory citation of each exception which will expire in the following year which meets the criteria of an exception as defined in this section. Any exception that is not identified and certified to the president of the senate and the speaker of the house of representatives is not subject to legislative review and shall not expire. If the revisor of statutes fails to certify an exception that the revisor subsequently determines should have been certified, the revisor shall include the exception in the following year's certification after that determination.

(f) "Exception" means any provision of law which creates an exception to disclosure or limits disclosure under the open records act pursuant to K.S.A. 45-221, and amendments thereto, or pursuant to any other provision of law.

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(g) A provision of law which creates or amends an exception to disclosure under the open records law shall not be subject to review and expiration under this act if such provision:

- (1) Is required by federal law;
- (2) applies solely to the legislature or to the state court system.

(h) (1) The legislature shall review the exception before its scheduled expiration and consider as part of the review process the following:

- (A) What specific records are affected by the exception;
- (B) whom does the exception uniquely affect, as opposed to the general public;
- (C) what is the identifiable public purpose or goal of the exception;
- (D) whether the information contained in the records may be obtained readily by alternative means and how it may be obtained;

(2) An exception may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exception and if the exception:

(A) Allows the effective and efficient administration of a governmental program, which administration would be significantly impaired without the exception;

(B) protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. Only information that would identify the individuals may be excepted under this paragraph; or

(C) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(3) Records made before the date of the expiration of an exception shall be subject to disclosure as otherwise provided by law. In deciding whether the records shall be made public, the legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exception of the type specified in paragraph (2)(B) or (2)(C) of this subsection (h) would occur if the records were made public.

(i) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) of this section on June 1, 2004, are hereby continued in existence until July 1, 2010, at which time such exceptions shall expire: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-1312e, 17-2227, 17-5832, 17-7503, 17-7505, 17-7511, 17-7514, 17-76,139, 19-4321, 21-2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312, 25-4161, 25-4165, 31-405, 34-251, 38-1508, 38-1520, 38-1565, 38-1609, 38-1610, 38-1618, 38-1664, 39-709b, 39-719e, 39-934, 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21, 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b, 40-3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, subsections (a)(1) through (43) of 45-221, 46-256, 46-259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427, 55-1,102, 56-1a606, 56-1a607, 56a-1201, 56a-1202, 58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-3336, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a, 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4608, 65-4922, 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203, 66-1220a, 66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-50,131, 74-5515, 74-7308, 74-

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(j) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) of this section on June 1, 2005, are hereby continued in existence until July 1, 2011, at which time such exceptions shall expire: 1-501, 9-1303, 12-4516a, 38-1692, 39-970, 40-4913, 65-525, 65-5117, 65-6016, 65-6017 and 74-7508.

(k) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) during 2006, 2007 and 2008 are hereby continued in existence until July 1, 2014, at which time such exceptions shall expire: 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-1324, 8-1325, 12-17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46) and (47) of 45-221, 56-1a610, 56a-1204, 65-1,243, 65-3239, 66-1233, 74-50,184, 74-8134, 74-99b06 and 82a-2210.

History: L. 2000, ch. 156, § 8; L. 2005, ch. 126, § 2; L. 2006, ch. 87, § 1; L. 2007, ch. 195, § 28; L. 2009, ch. 45, § 2; July 1.

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The 2008 Florida Statutes

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PUBLIC BUSINESS PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

286.0111 Legislative review of certain exemptions from requirements for public meetings and recordkeeping by governmental entities.--The provisions of s. [119.15](#), the Open Government Sunset Review Act, apply to the provisions of law which provide exemptions to s. [286.011](#), as provided in s. [119.15](#).

History.---s. 9, ch. 84-298; s. 2, ch. 85-301; s. 3, ch. 95-217; s. 53, ch. 2008-4.

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The 2008 Florida Statutes

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PUBLIC OFFICERS, EMPLOYEES, AND RECORDS PUBLIC RECORDS

119.15 Legislative review of exemptions from public meeting and public records requirements.--

(1) This section may be cited as the "Open Government Sunset Review Act."

(2) This section provides for the review and repeal or reenactment of an exemption from s. 24, Art. I of the State Constitution and s. [119.07\(1\)](#) or s. [286.011](#). This act does not apply to an exemption that:

(a) Is required by federal law; or

(b) Applies solely to the Legislature or the State Court System.

(3) In the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption shall be repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

(4)(a) A law that enacts a new exemption or substantially amends an existing exemption must state that the record or meeting is:

1. Exempt from s. 24, Art. I of the State Constitution;

2. Exempt from s. [119.07\(1\)](#) or s. [286.011](#); and

3. Repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

(b) For purposes of this section, an exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

(c) This section is not intended to repeal an exemption that has been amended following legislative review before the scheduled repeal of the exemption if the exemption is not substantially amended as a result of the review.

(5)(a) By June 1 in the year before the repeal of an exemption under this section, the Division of Statutory Revision of the Office of Legislative Services shall certify to the President of the Senate and

(b) Any exemption that is not identified and certified to the President of the Senate and the Speaker of the House of Representatives is not subject to legislative review and repeal under this section. If the division fails to certify an exemption that it subsequently determines should have been certified, it shall include the exemption in the following year's certification after that determination.

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

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public unless otherwise provided by law. In deciding whether the records shall be made public, the Legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exemption of the type specified in subparagraph (6)(b)2. or subparagraph (6)(b)3. would occur if the records were made public.

(8) Notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

History.--s. 2, ch. 95-217; s. 25, ch. 98-136; s. 37, ch. 2005-251; s. 15, ch. 2006-1.

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